

## **RIDER D**

### **ADDITIONAL PROVISIONS**

The following provisions supplement **Rider B – Methods of Payment and Other Provisions** and apply to all agreements with the Department of Behavioral and Developmental Services.

1. **Audit.** Funds provided under this Agreement are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP-III), Federal OMB Circular A-110, and may further be subject to audit by authorized representatives of the Federal Government. The Department may request and/or conduct an audit at any time, upon reasonable notice to Provider. A copy of the financial statements and supplemental schedules (MAAP) will be mailed to the Department and to the Division of Audit on a timely basis. This provision does not apply to contracts that provide only MaineCare seed funds.
2. **Reporting Suspected Abuse/Neglect.** The Provider agrees that when any staff in its employ under this Agreement has reasonable cause to suspect that a child or adult has been or is likely to be abused or neglected, the Provider shall cause a report to be made to the Department of Human Services pursuant to 22 M.R.S.A. §§ 3477 and 4011.
3. **Confidentiality.** In conformance with Federal and State statutes and regulations, the Provider shall protect information of a confidential nature regarding all persons served under the terms of this Agreement, including without limitation the proper care, custody, use, and preservation of records, papers, files, communications of Provider and any such other items that may reveal confidential information about persons served through this Agreement.
4. **Lobbying.** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision.

If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a “Disclosure of Lobbying Activities” form available at <http://www.whitehouse.gov/omb/grants/#forms>.

5. **Drug-Free Workplace.** The Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Provider's workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Provider's policy of maintaining a drug-free workplace, available drug counseling rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of services relating to this Agreement; notifying employees that as a condition of employment in the performance of services under this Agreement the employee will abide by the terms of the statement; and requiring that employees notify the Provider of any criminal drug conviction for a violation occurring in the workplace no later than five calendar days after such conviction.

Within ten calendar days after receiving from an employee notice of a criminal drug conviction occurring in the workplace or otherwise receiving actual notice of such conviction, the Provider shall notify the Department of the conviction and shall take one of the following actions within thirty calendar days of the receipt of notice of the conviction: (i) take appropriate personnel action against the employee, up to and including termination; or (ii) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

6. **Debarment and Suspension.** Provider certifies to the best of its knowledge that it and all persons associated with this Agreement, including persons or corporations who have critical influence on or control over the provision or administration of services under this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

The Provider shall cause the foregoing Debarment and Suspension certification to be inserted, without modification, in any subcontracts for any work covered by this Agreement so that such provisions shall apply to and be binding upon each subcontractor.

7. **Environment Tobacco Smoke.** The Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which prohibits smoking in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education or library services to children under age 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Provider shall cause the foregoing certification to be inserted in any subcontracts for any work covered by this Agreement so that such certification shall apply to and be binding upon each subcontractor.

8. **Medicare and MaineCare Anti-Kickback.** The Provider shall comply with the provisions of 42 U.S.C §1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a provider of goods or services that may be paid for with funds from Medicare, **MaineCare**, or a state health program.

9. **Publications.** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Behavioral & Developmental Services in the program.

10. **Motor Vehicle Check.** The Provider shall complete a check with the Bureau of Motor Vehicles on all of Provider's staff and volunteers who transport clients or who may transport clients. This check must be completed before the Provider allows the staff person or volunteer to transport clients, and at least every two years thereafter. If the record of a staff member or volunteer contains an arrest or conviction for Operating under the Influence or any other violations which, in the judgment of the Provider, indicate an unsafe driving history within the previous three (3) years, the Provider shall not permit the staff member or volunteer to transport clients. The Provider shall implement appropriate procedures to ensure compliance with the requirements of this section.

11. **Bonding.** The Provider shall obtain and maintain at all times during the term of this Agreement a fidelity bond covering the activities of all employees who handle funds of the Provider in an amount equal to at least 20% of the total amount of this Agreement.

12. **Revenue Maximization.** The Provider shall conduct its services in such a way as to maximize revenues from MaineCare and other third-party sources as may be available to reduce the need for funds from the Department.

13. **Interpretation Services (Communication Access).** The Provider shall determine the primary language of individuals requesting services and ensure that the services are provided either by a bi-lingual clinician or with the assistance of a qualified interpreter when English is not the primary language. The client shall not be charged.

14. **Accessibility for the Deaf and Hard of Hearing.**

The Provider shall maintain and periodically test a telecommunications device for the deaf (TTY) that is available and accessible for use by clients and staff for incoming and outgoing calls. The Provider shall ensure that appropriate staff have been trained in the use of the telecommunications device and that the TTY telephone number is published on all of the Provider's stationery, letterhead, business cards, etc., and in the local telephone books as well as in the statewide TTY directory.

b. The Provider, at its expense, shall obtain the services of a qualified sign language interpreter or other adaptive service or device when requested by a consumer or family member. Interpreters must be licensed with the Maine Department of Professional and Financial Regulation in the Office of Licensing and Registration. The Provider shall document the interpreter's name and license number in the file notes for each interpreted contact.

15. **Deaf and/or severely hard of hearing.** Providers who serve deaf and/or severely hard of hearing consumers shall:

a. Provide visible or tactile alarms for safety and privacy (e.g., fire alarms, doorbell, door knock light);

b. Provide or obtain from the Maine Center on Deafness loan program a TTY or fax as appropriate for the consumers' linguistic ability and preference and a similar device for the program office; and

c. Train staff in use and maintenance of all adaptive equipment in use in the program, including but not limited to: hearing aids, TTY, fax machine, caption controls on TV, and alarms.

16. **Provider responsibilities: deaf, hard of hearing and/or nonverbal.** Providers who serve deaf, hard of hearing, and/or nonverbal consumers for whom sign language has been determined as a viable means of communication shall:

a. Provide ongoing training in sign language and visual gestural communication to all staff on all shifts who need to communicate meaningfully with these clients, and document staff attendance and performance goals with respect to such training;

b. Develop clear written communication policies for the agency and each program of the agency, including staff sign/visual gestural proficiency expectations, and when and how to provide qualified sign language interpretation; and

c. Ensure that staff have a level of proficiency in sign language that that is sufficient to communicate meaningfully with consumers.

17. **Service Development.** The Provider shall provide services in a culturally sensitive and age appropriate manner.

**18. Staffing.** The Provider shall supply all staff training, clinical and administrative supervision, and evaluation appropriate to the performance of services under this Agreement. The Provider's staffing of all service programs contracted herein shall be in accordance with its final approved budget submission for the contract period.

**19. Background Checks.** The Provider agrees to conduct background checks on all prospective employees, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this contract. The provider shall not hire or retain in any capacity any person who has a prior criminal conviction or disciplinary action by a professional licensing, registration, or accrediting body that pertains to client abuse, neglect, or exploitation. Background checks on persons professionally licensed by the State of Maine will consist of confirmation that the licensee is in good standing under his/her professional license.

**20. Exceptions to OMB Circulars.**

a. Bad Debt. Bad debt is defined as the operating expense incurred because of the failure to collect receivables, and the related costs to collect. Bad debts must be offset against identified non-State, non-Federal, unrestricted revenue. The provider must make a good faith effort to collect the receivable (e.g. through billing, pursuing through a collection agency, etc.)

b. Interest Expense

i. Per A-122, paragraph 23: costs incurred for interest on borrowed capital are unallowable. Interest on debt incurred after 9/29/95 to acquire or replace capital assets is allowable.

ii. DBDS exception allows interest on borrowed capital on or before 9/29/95 to be prorated and offset against DBDS agreement State revenue and other unrestricted non-Federal revenue.

(Note: interest incurred for short term cash flow loans can be offset using non-State, non-Federal unrestricted revenue).

c. Interest Income. Providers shall maintain advances of Department funds in interest-bearing accounts, unless the total agreement amount is less than \$120,000, throughout the contract period until settlement. Interest earned on state or federal funds must be returned to the Department; the provider may retain the first \$250 for administrative expenses. See federal circular A 110 paragraph 22 for more details.

d. Travel. The reimbursement rate for mileage charged to BDS funded programs cannot exceed the reimbursement rate allowed for state employees. (5 M.R.S.A. §1541(13)(A).

e. Any other exceptions to OMB Circular A-122 are allowable only with prior written approval from the Department, and must be offset against identified unrestricted non-Federal revenue.

**21. Unexpended Funds.** Upon the completion of the agency's independent audit for this agreement, the agency will submit to the Department a check in the amount of at least 90% of any unexpended state funds and 100% of unexpended federal funds, plus interest income earned, as an interim payment pending the results of the audit completed by the Division of Audit, Community Services Center. The Provider may retain the first \$250 of interest income for administrative expenses. A copy of the independent audit and the Agreement Settlement Form (F-1) must accompany this payment.

**22. Ownership.** All notebooks, plans, working papers, or other work produced in the performance of this Agreement, that are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.

**23. Software Ownership.** Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement, or is integral to the program or service funded under this Agreement, and is primarily financed with funding provided under this Agreement.

**24. Business Associate Clause.**

a. The purpose of this clause is to establish the permitted and required uses and disclosures of any protected health information (PHI) that the Provider and the Department may possess by reason of their relationships with each other.

i. To the extent that Provider or the Department may obtain PHI in the course of their duties under the Contract, Provider and the Department agree:

(a) to maintain the same level of security and privacy with respect to the PHI as required under the applicable policies and procedures of the department; and

(b) to comply with any security or privacy requirements for the PHI that may be imposed pursuant to the Health Insurance Portability and Accountability Act (HIPAA, PL 104-191) and other applicable laws or regulations.

ii. Provider and the Department may use PHI:

(a) to carry out their legal responsibilities provided that any such use involving the disclosure of PHI to third parties shall be carried out in accordance with the specific requirements of this Clause; and

(b) to provide data aggregation services related to the healthcare operations of the Provider or the Department .

b. Uses and disclosures. Except as specifically authorized in writing by individuals who are the subjects of the PHI, or as required by law, Provider and the Department will maintain the confidentiality of all PHI in accordance with the provisions of this Clause and of the HIPAA Privacy Rule 45 CFR Parts 160 and 164). Provider and the

Department hereby agree to

- i. not use or further disclose the PHI, except as permitted or required by this contract or as required by law;
- ii. use appropriate safeguards to keep the PHI confidential;
- iii. report any inappropriate disclosure of the PHI of which the parties becomes aware;
- iv. ensure that the parties' agents or subcontractors (including any person to whom PHI may be disclosed hereunder) comply with the terms of this amendment
- v. make the PHI available to the individual upon written request as appropriate;
- vi. allow and incorporate amendments to the PHI by the individual;
- vii. make available to the individual an accounting of any disclosures of the PHI;
- viii. make the parties' internal practices and records available to the Secretary of HHS for the purposes of determining the parties' compliance with the requirements of the Clause and of the HIPAA Privacy Rule; and
- ix. return, destroy or keep the protection of the PHI in place for such period as the parties retains the PHI, upon termination of the Contract

c. Termination of Contract. The parties hereby agree that the contract may be terminated for any breach by either party of their obligations hereunder.

**25. MaineCare regulations.** Providers who receive MaineCare funds will assure that their programmatic and financial management policies and procedures are in accordance with applicable MaineCare regulations and that their staff are familiar with the requirements of the applicable MaineCare service they are providing. Providers will ensure that they are in compliance with the applicable MaineCare regulation prior to billing for the service.

Revised: March, 2003